

CHAPTER NO. 273

SENATE BILL NO. 1082

By Ketron

Substituted for: House Bill No. 786

By DuBois, Henri Brooks

AN ACT to amend Tennessee Code Annotated, Title 45; Title 47 and Title 66, relative to residential mortgages.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by adding Sections 2 through 8 of this act as a new, appropriately designated chapter.

SECTION 2. This act shall be known and may be cited as the "Residential Closing Funds Distribution Act of 2005".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Agricultural land" means land used for "agriculture" as defined in Tennessee Code Annotated, § 1-3-105;

(2) "Disbursement of loan funds" means the delivery of the loan funds by the mortgage lender to the settlement agent in one or more of the following forms:

(A) Cash;

(B) Wired funds;

(C) Checks issued by the State of Tennessee or a political subdivision of the state;

(D) Cashier's check;

(E) Teller's check or other official check, however designated, which is:

(i) issued by a financial institution; and

(ii) drawn on or payable through a financial institution within the same Federal Reserve check processing region as the location of the settlement agent;

(F) Checks issued by an instrumentality of the United States organized and existing under the Farm Credit Act of 1971, as amended; or

(G) Checks issued from the escrow or trust account of a real estate broker licensed pursuant to Tennessee Code Annotated, § 62-13-101 *et. seq.* and drawn on or payable through a financial institution within the same Federal Reserve check processing region as the location of the settlement agent in an amount not to exceed the earnest money paid by the purchaser and collected in such fiduciary account.

(3) "Disbursement of settlement proceeds" means the payment of any proceeds of the transaction by the settlement agent to the persons entitled thereto;

(4) "Dwelling" means a residential structure or mobile home which contains one (1) to four (4) family housing units, or individual units of condominiums or cooperatives;

(5) "Financial institution" means a bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;

(6) "Loan closing" means that time agreed upon by the borrower and lender, when the execution of the loan documents by the borrower occurs;

(7) "Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due to the lender, and any other documents required by the lender to be executed by the borrower as a part of the transaction;

(8) "Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender, in one of the forms identified in subdivision (2), at loan closing;

(9) "Mortgage" means a "mortgage" or "deed of trust" as defined in and allowed pursuant to § 66-5-103;

(10) "Mortgage lender" means any person who in the regular course of business lends money that is secured by a mortgage or deed of trust on real estate. "Mortgage lender" includes a "mortgage loan broker" and "mortgage loan servicer";

(11) "Mortgage loan" means any loan secured by a mortgage, intended for any purpose;

(12) "Mortgage loan broker" means any person who for compensation or other gain, paid directly or indirectly, or in expectation of compensation or other gain, solicits, processes, places, negotiates or originates mortgage loans for others, or offers to solicit, process, place, negotiate or originate mortgage loans for others or who close mortgage loans which may be in the mortgage loan broker's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans; regardless of whether the acts are done directly or indirectly, through contact by telephone, by electric means, by mail, or in person with the borrowers or potential borrowers;

(13) "Mortgage loan servicer" means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a mortgage loan;

(14) "Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents, and other documents and funds required to carry out the terms of the contract between the parties and the settlement agent reasonably determines that prerecordation conditions of such contracts have been satisfied. "Parties" as used in this subdivision means the seller, purchaser, borrower, lender and the settlement agent;

(15) "Settlement agent" means the person, other than a mortgage lender, responsible for conducting the settlement and disbursement of the settlement proceeds and includes any individual, corporation, partnership, or other entity conducting the settlement, collection and disbursement of loan proceeds.

SECTION 4. (a) This chapter applies to transactions involving loans made by mortgage lenders utilizing settlement agents, which loans will be secured by deeds of trust or mortgages on real estate:

(1) Containing not more than four (4) residential dwelling units, regardless of the purpose of such dwellings;

(2) Vacant lots zoned or designated for use as residential property; or

(3) Agricultural land.

(b) This chapter does not apply to transactions involving loans made by mortgage lenders on:

(1) Commercial real estate; or

(2) Industrial or other real estate not included in subsection (a) above.

SECTION 5. (a) A mortgage lender, mortgage loan broker, mortgage loan servicer, or other person shall, at or before loan closing, cause disbursement of loan funds, in one of the forms identified in subdivision (2) of SECTION 3, to the settlement agent.

(b) In any transaction in which the borrower may exercise a right of rescission under the federal Truth-in-Lending Act (15 U.S.C., § 1601 *et seq.*) and applicable federal regulations and interpretations, a mortgage lender, mortgage loan broker, mortgage loan servicer, or other person, shall cause disbursement of loan funds to the settlement agent not later than the first business day after the expiration of the rescission period.

SECTION 6. (a) No settlement agent shall disburse any funds from an escrow or settlement account in connection with a mortgage loan transaction identified in subsection (a) of SECTION 4 until:

(1) Disbursement of loan funds, designated for said mortgage loan, has been received by the settlement agent; and

(2) Such additional funds necessary to be provided by the borrower or other third party to fully fund the transaction. All additional funds required by this subdivision (2) in excess of one thousand dollars (\$1,000), shall be provided to the settlement agent in the one of the forms identified in subdivision (2) of SECTION 3; and

(3) All documents required to complete the transaction have been executed and are deemed suitable for recording.

(b) In any transaction in which the borrower may exercise a right of rescission under the federal Truth-in-Lending Act (15 U.S.C., § 1601 *et seq.*), and the settlement agent has received loan funds prior to or on the first business day after the time the rescission right has expired, the settlement agent shall not disburse any settlement proceeds earlier than the first day after the expiration of the rescission period, and the settlement agent has determined that the borrower has not exercised the right of rescission.

SECTION 7. Failure to comply with the provisions of this chapter shall not affect the validity or enforceability of any loan documents.

SECTION 8. (a) Any party violating this chapter is liable to any other party suffering a loss due to such violation, for any actual damages sustained, plus reasonable attorneys' fees. In addition, any party in violation of this chapter shall pay to the other party or parties suffering a loss an amount equal to one thousand dollars (\$1,000), or double the amount of interest payable on the mortgage loan for the first sixty (60) days after the loan closing, whichever amount is greater.


(b) Any party may bring an action in chancery court for declaratory or injunctive relief to prevent any violations of this chapter.

(c) In any private action commenced under this chapter, upon finding that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment, the court may require the person instituting the action to indemnify the defendant for any damages incurred, including reasonable attorneys' fees and costs.

SECTION 9. This act shall take effect on September 1, 2005, the public welfare requiring it.

PASSED: May 16, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 28th day of May 2005


PHIL BREDESEN, GOVERNOR